



Atty. Docket No.: 2734-CIP-Z

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of
Francis C. Carroll
Serial No. 09/027,867
Filed: February 23, 1998
For: SPORTS SHOE CLEATS

Group Art Unit 3728
Examiner Marie Patterson

TECH. UNIT 3700

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REPLY BRIEF

Hon. Commissioner of Patents & Trademarks
Washington, D. C. 20231

Sir:

This Reply Brief is directed to new points of argument which appear to have been raised in the Examiner's Answer.

Dealing with the Examiner's comments in the "Response to Argument", beginning at page 5, in the order of their appearance in the Examiner's Answer:

1. Appellant's reference was to the fact that the hand-drawn sketch was on the reference copy provided by the Patent and Trademark Office. Appellant agrees that the Softspikes cleat is well known and that the side view is likewise well known.

2. While a statement may or may not differentiate the claimed apparatus from the prior art, in appellant's claim, the cleat is differentiated from a running shoe cleat in that appellant's claim requires:

...a plurality of shaped traction teeth ..., each traction tooth surface having an outward angulation relative to said axis AL to provide lateral stability and enhanced traction through the plane of a golf swing.

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Manifestly, the structural limitations in the claims are related directly to the golf swing and Dassler's angulations are not in any sense related to a golf swing and does not relate in any way to providing lateral stability and enhanced traction "through the plane of a golf swing."

3. In referring to column 4, lines 32 - 35, of Dassler, it is respectfully submitted that instead of supporting the Examiner, this portion of Dassler clearly supports the appellant's position. It reads as follows:

Studs or cleats 1 form preferably an integral unit, but it is basically feasible in the case of soles produced by casting to place studs or cleats 1 separately in the mold, and to recast them with the sole material. (Emphasis added.)

Thus, when the soles are recast the cleats are embedded therein and making them one. They certainly are not secured by rotation of any shoe-mounting member in a receptacle in a golf shoe.

4. As the appellant has made clear, the so-called arms of Dassler are really not teeth but are really cushioning spring arms to which, should be noted, Dassler attributes his skid resistance and to the fact that his arms bend over and provide a larger surface area (see column 4, lines 26-38). In the golf swing itself, the golfer seeks to avoid untoward movement of his feet such as may be caused by the bending of teeth during a golf swing.

5. Appellant's reference to cotton and wool was to provide relative comparisons between the softness of materials that are commonly known and the hardness of a bowling ball. It was not

intended to imply that the Dassler reference contained this comparison.

6. In connection with this contention of the Examiner, it is noted that in the molding of a sole of a running shoe of Dassler, the plurality of the arms' angulations, when molded or cast, become integral with a sole, and, because of these angulations, they could not be retrieved from a mold if the material is hard.

7. The embodiment shown in Figure 4 of Dassler is pertinent as being part of the overall disclosure which must be considered since it, like the rest of Dassler teaches away from appellant's invention in that it teaches the shock-absorbing arm adjustment in the shock-absorbing feature of Dassler and is another reason why those skilled in the art, considering Dassler for all that it teaches, would not deem Dassler a teaching reference for the angled teeth defined in appellant's claims.

8. It is not appellant's contention as the Examiner states that "Dassler is only directed towards a cleat for use on hard surfaces...." What appellant argued was that "Dassler does not contemplate his studs digging in the turf of a golf course at all as he contemplates use on the usual hard surfaces," citing column 1, lines 25-32, of Dassler. Column 1, lines 25-32 state that:

...the object of the invention is to improve soles of the above-disclosed type so as to provide a high degree of slip resistance, sole elasticity, and lateral stability even on different deck surfaces, and especially on hard surfaces, such as asphalt streets or roads where sufficient shock absorption must be obtained in order to protect the runner from excessive strain. (Emphasis added.)

9. In regard to the Examiner's dismissal of appellant's argument that Dassler's teeth change angle according to the pressure placed on the arm surface, as not understood and not persuasive. "The fact that the angle of the teeth of Dassler are capable of changing does not negate the fact that Dassler teaches providing angled teeth [sic, arms?]." Appellant's argument had to do with the golf swing which in itself is one that seeks to avoid untoward movement at the feet such as may be caused by the bending of teeth during a golf swing. According to appellant's claimed invention, the plurality of traction teeth are circumferentially spaced around a circular parameter of the main body of the member and each traction tooth having an outward angle traction tooth surface "to provide lateral stability and traction through the plane of a golf swing." This is not the case with the arms of Dassler.

10. Finally, appellant respectfully submits that in applying the obviousness test in the combination of Softspikes and Dassler, the Examiner impermissibly used appellant's disclosure in arriving at the combination proposed to reject the claims. This is clear because appellant has shown in his charts that the bulk of the prior art where teeth or spikes used are the vertically oriented. Angulation of the teeth of golf cleats was not done until the advent of appellant's invention. Moreover, Dassler does not even refer to his arms as teeth, which is a gloss overlaid on

Dassler by the Examiner and not supported by the teaching of Dassler.

In view of the above, it is respectfully submitted that the Examiner erred in rejecting the claims and should be reversed.

Respectfully submitted,



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In the event this paper is deemed not timely filed, the applicant hereby petitions for an appropriate extension of time. The fee for this extension may be charged to Deposit Account No. 26-0090 along with any other additional fees which may be required with respect to this paper.